
(2019) 10 JH CK 0062

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6915 Of 201

Vidyanand Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Right Of Children to Free And Compulsory Education Act, 2009 — Section 23
National Council for Teacher Education Act, 1993 — Section 12, 12A
Constitution Of India, 1950 — Article 254

Citation : (2019) 10 JH CK 0062

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Arvinda Kumar Choudhary, Chandra Prabha, Vishal Kr. Rai

Final Decision : Disposed Of

Judgement

The petitioner has approached this Court with a prayer for quashing the Office Order contained in Memo No. 1443 dated 19.08.2017 issued by the District Superintendent of Education, whereby and whereunder, the services of the petitioner as Graduate Trained Assistant Teacher has been terminated.

At the very outset, Mr. Arvind Kumar Choudhary, learned counsel for the petitioner submit that the issue involved in this writ petition is no more res integra and this writ application is squarely covered by the order passed by this Court in W.P.(S).No.963 of 2017 & other analogous cases. Learned counsel further submits that this case may be disposed of in terms of order passed in the aforesaid cases.

Per contra, counter-affidavit has been filed on behalf of the respondents. However, learned counsel appearing on behalf of the respondents very fairly submits that since similar issue has already been decided by this Court on 12.09.2019 in W.P.(S).No.963 of 2017 & other analogous cases and if on scrutiny, the case of the present petitioner is found to be on the similar footings to the cases of the petitioners in W.P.(S).No.963 of 2017 & other analogous

cases, same benefits shall be extended to the present petitioner also.

Be that as it may, having gone through fair submissions of the parties, it appears that similar issue fell for consideration before this Court in W.P.(S).No.963 of 2017 & other analogous cases and this Court, after hearing the Counsels for the parties at length, has disposed of the said writ petitions on 12.09.2019, with the following observations and directions to the State:-

9. Be that as it may, having gone through the rival submissions of the parties and after perusal of materials on record, this Court is of the considered view that case of the petitioners need consideration. The counter-affidavit filed by the respondent-State and NCTE is contrary to each other. The State Government has already taken into consideration the different notification and on the basis of opinion of the expert bodies have acted upon them and came to a finding that even Commerce Graduate can be appointed as teacher under the Social Science subject to impart education to Class VI to VIII. However, for proper adjudication of the cases, it would be appropriate to go through the relevant Provisions of NCTE as well as Rules for appointment of teachers issued by the State of Jharkhand and terms and conditions prescribed in the advertisement. The NCTE Notification dated 23.08.2010 is reproduced herein below :-

(II) Classes VI-VIII

(a) B.A./B.Sc. and 2 year Diploma in Elementary Education (by whatever name known.

Or

B.A./B.Sc. with at least 50 % marks and 1 year bachelor in Education (B.Ed.)

Or

B.A./B.Sc. with at least 45 marks and 1 years Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedures) Regulations issued from time to time in this regard.

Or

Senior Secondary (or its equivalent) with at least 5- % marks and 4 year bachelor in Elementary Education (B.El, Ed.)

Or

Senior Secondary (or its equivalent) with at least 50 % marks and 4 year BA/ B.Sc., Ed. Or B.A Ed/B.Sc. Ed.

Or

B.A./B.Sc. with at least 50 % marks and 1 year B.Ed. (special education

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

Further, para 2 of the Notification dated 04.05.2011 issued by the NCTE is reproduced herein below:-

(2) The NCTE has received representations from State Governments and other stakeholders in respect of inclusion of B.Com degree holders for the appointment of teachers as referred above. Therefore, it has been decided in the meeting held at MHRD on 8th April, 2011 to include B.Com graduates in para 1 to 3 of the aforesaid notification to appear in the TET examination. It is request to make appropriate change in the TET related criteria at your end.

Further, the Notification dated 29.07.2011 issued by the Government of India, NCTE reads as under :-

(1) For sub-para (ii) of para 1 of the Principal Notification, the following shall be substituted, namely :-

(ii) Classes VI -VIII

(a) Graduation and 2 year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50 % marks and 1 year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45 marks and 1 year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) at least 50 % marks and 4 year bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50 % marks and 4 year B.A/ B.Sc.Ed. or B.A.Ed/B.Sc. Ed.

OR

Graduation with at least 50 % marks and 1 year B.Ed. (Special Education)

AND

(b) Pass in Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the

purpose.

Further, the eligibility criteria for appointment of teachers in class VI to VIII issued vide Notification dated 05.09.2012 by the Government of Jharkhand i.e. Human Resources Development Department is reproduced herein below:-

उच्च प्राथमिक कक्षा के शिक्षकों की नियुक्ति हेतु:-

(अ) स्नातक अथवा इसके समकक्ष और प्रारंभिक शिक्षा में द्विवर्षीय डिप्लोमा (चाहे जिस किसी नाम से जाना जाता हो)

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ स्नातक (अथवा इसके समकक्ष) एवं शिक्षा शास्त्र में एक वर्षीय स्नातक (बी. एड.)

अथवा

न्यूनतम 4.5 प्रतिशत अंकों के साथ स्नातक (अथवा इसके समकक्ष) एवं शिक्षा शास्त्र में एक वर्षीय स्नातक (बी. एड.) जो इस संबंध में समय-समय पर जारी किये गये राष्ट्रीय अध्यापक शिक्षा परिषद् (मान्यता, मानदण्ड तथा क्रियाविधि) विनियमों, के अनुसार प्राप्त किया गया हो

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) एवं 4 वर्षीय प्रारंभिक शिक्षा शास्त्र में स्नातक (बी.एल.एड.)

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं 4 वर्षीय बी.ए./बी.एस.सी. एड. या बी.ए..एड./बी.एस.सी.एड.

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ स्नातक (अथवा इसके समकक्ष) तथा एक वर्षीय बी.एड. (विशेष शिक्षा)

एवं

राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा निरूपित मार्गदर्शी सिद्धान्तों के अधीन झारखण्ड सरकार द्वारा कक्षा 6 से कक्षा 8 के लिये आयोजित अध्यापक पात्रता परीक्षा (टी0ई0टी0) में उत्तीर्ण

10. The Notification issued by the NCTE dated 23.08.2010 in para II (a) clearly prescribed that candidates having B.A./B.Sc. degree are entitled for appointment in Class VI to VIII. However, the NCTE vide notification dated 04.05.2011 i.e. Annexure-5 to the writ petition further clarified that even the B.Com degree holders are included in para 1 to 3 to the notification dated 23.08.2010 and appropriate notification to that effect was issued on 29th July, 2011 by the NCTE, wherein in place of words 'B.A/B.Sc.', the word 'Graduation' was inserted. That means, the Graduates of any stream, being Arts, Science or Commerce, were made entitled for appointment for Classes VI to VIII as teachers. Further, the NCTE vide its reply dated 09.12.2016 under RTI Act, 2005 has clarified that pursuant to Notification dated 29th July, 2011, a Commerce Graduate is entitled for appointment as a Teacher in Upper Primary Section, which is at Annexure 15

series to W. P. (S) No.963 of 2017. The NCTE in the case of Ritesh Tripathi Vs. State of Rajasthan & Ors., reported in 2011 SCC online Raj 969 filed an affidavit to the effect that Commerce Graduates are entitled for appointment in classes VI to VIII as teachers. In case of Ajit Kumar Pandey Vs. State of Orissa & Ors., reported in 2010 SCC online Ori 315, same ratio was applied and Commerce Graduates were made entitled for appointment to Arts Teacher posts. Since, the NCTE itself amended the Notification dated 23.08.2010 and issued amended notification dated 29.07.2011 prescribing the qualification for appointment of teachers to be Graduation only in place of 'B.A/B.Sc.', at relevant para of that notification. The respondents cannot deny the same and take a U-turn as no further notification in suppression to the said notification is in existence.

11. In supplementary counter-affidavit dated 27.10.2018 filed on behalf of the respondents in W.P.(S) No.1386 of 2017, it has been clearly stated in para 7 that in response to the aforesaid query/guidance, the department of Higher, Technical and Skills Development after consultation with all the five Universities of the State vide letter No. 1675 dated 20.08.2018 has opined that at present, the streams of Languages (Humanities) and Commerce have not been segregated and come under the purview of the Social Science stream and hence the qualification /eligibility acquired by a Commerce Degree could be placed under the Category of Social Science.

12. As a sequitur to the aforesaid rules, observations, guidelines and judicial pronouncement, this Court is of considered opinion that the impugned orders are not sustainable in the eyes of law for the following facts and reasons :-

1. From perusal of the documents brought on record and consideration of the relevant Rules of the NCTE and also subsequent amendments/ modifications, it transpires that Graduates of any stream are eligible for appointment as Graduate Trained Teacher for Class VI to VIII.

2. In case of Bhim Narayan Das Vs. The State of Jharkhand [W.P.(S) No.3246 of 2017], the respondent-State of Jharkhand has come out with a Memo dated 28.08.2018, whereby it has been clarified that Graduation Degree obtained on the basis of Commerce syllabus can be kept under the Category of Social Science under the provisions of Jharkhand Primary School Teachers Appointment Rules, 2012.

3. Vide Memo No. 858 dated 29.04.2019 issued by the DSE, Dumka, the services the petitioner in W.P.(S) No.3246 of 2017 has been reinstated in view of Memo dated 28.08.2018, considering the Commerce Graduates eligible for appointment as Assistant Teachers, and subsequently, the order of termination was recalled vide Memo dated 29.04.2019, which shows that even the Commerce Graduates can be considered for appointment as Assistant Teacher in Arts Stream as Commerce Degree has been considered to similar degree as that of Social Science.

4. The Hon'ble Apex Court in case of State of Uttar Pradesh & Ors. Vs. Shiv

Kumar Pathak & Ors., reported in (2018) 12 SCC 595 at para 14 & 17 has held thus :-

14. On the other hand, the stand of the original writ petitioners is that the subject of education falls under Schedule VII List III Entry 25 of the Constitution after the 42nd Amendment. Thus, by virtue of Article 254 of the Constitution, the law made by Parliament prevails over any law made by the State. It was submitted that the NCTE Act has been enacted by Parliament to achieve "planned and coordinated development of the teacher education system". The Council constituted under the Act is empowered to issue guidelines under Sections 12 and 12-A for ensuring planned and coordinated development of teacher education and also to lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher. Further, vide Notification dated 31-3-2010 under Section 23 of the RTE Act, the Central Government has authorised NCTE as the "academic authority" to lay down minimum qualifications for a person to be eligible for appointment as a teacher.

17. There is no manner of doubt that NCTE, acting as an "academic authority" under Section 23 of the RTE Act, under the Notification dated 31-3-2010 issued by the Central Government as well as under Sections 12 and 12-A of the NCTE Act, was competent to issue Notifications dated 23-8-2010 and 11-2-2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that Notification dated 11-2-2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.

13. In view of the specific stands of the respondents and in view of the Memo dated 28.08.2018 and 29.04.2018, the orders of termination i.e. impugned order dated 02.12.2016 issued by respondent No.4 [in W.P.(S) No.963 of 2017], impugned order dated 03.11.2016 issued by respondent No.3 [in W.P.(S) No.476 of 2017], impugned order dated 28.07.2016 issued by respondent No.3 [in W.P.(S) No.1386 of 2017], impugned order dated 03.11.2016 issued by the respondent No.4 [in W.P.(S) No.6692 of 2016], impugned order dated 02.12.2016 issued by the respondent No.4 [in W.P.(S) No.917 of 2017], impugned order dated 02.12.2016 issued by the respondent No.4 [in W.P.(S) No.4645 of 2018] and impugned order dated 19.08.2017 issued by the respondent No.4 [in W.P.(S) No.5390 of 2017] are hereby quashed and set aside.

14. As a sequel of the quashment of the impugned orders, the respondents are directed to reconsider the case of the petitioners for appointment to the post of Assistant Teacher in Classes VI to VIII under the Social Science Subject with back wages. As far as issue of payment of salary for the period for which they have not worked due to their termination is left open for consideration by the

department concerned.

As a sequel of aforesaid discussion and judicial pronouncement, impugned order dated 19.08.2017 (Annexure-18) is hereby quashed and set aside and this writ petition stands disposed of with a direction upon the respondents to consider case of the present petitioner in terms of order dated 12.09.2019 passed in W.P. (S) No.963/2017 & other analogous cases and if the case of the petitioner herein is found similar to the petitioners in aforesaid cases, similar benefits shall be granted to the present writ petitioner also.